Kathrin Kinzer-Ellington

he bar needs to become more actively involved in promoting ethical standards. Judges need to become less tolerant of discovery abuse which drives up costs and is a disservice to the public.

Carolyn A. Wolf

First, to the extent that adverse public perception of lawyers is related to the success of criminal defense lawyers, I believe the only possible remedies are education of the public and improving the quality of law enforcement. Nonetheless, some public distrust or disdain for criminal defense lawyers is probably a fact of life that we should accept because we understand the constitutional framework.

Our goal should be to police and educate ourselves so that the profession can gain the respect and confidence of the public. We must not accept representation of frivolous or non-justiciable claims and we should do our best to expose and quickly dispose of cases that i not be litigated. We must educate ourselves so that we always provide competent legal advice to our clients at a reasonable price. The State Bar should encourage lawyers to adopt the Clients Bill of Rights approved by the ABA and should work on ways to increase professionalism.

SEVENTH DISTRICT

Mary T. Torres

Before we can get the public to respect us, we have to start respecting ourselves and other attorneys. We have to realize that the judiciary is an independent branch deserving of our respect. We don't have to agree with all the decisions that are made, but we have to respect them. I would like to see town meetings on professionalism, where members of the bench, bar and the public can air their views on our profession.

DISCIPLINARY BOARD

Disciplinary Note

Over the past few years, the office of disciplinary counsel has received sev-

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eral complaints concerning letters sent by lawyers representing personal injury plaintiffs to the insureds being sued. These letters were sent to the insureds after negotiations with the insurance company failed to achieve settlement and at the time suit was being filed, but before counsel had entered an appearance for the insured. Although each of the letters was different, all shared common characteristics which brought about this Disciplinary Note.

All the letters state, with varying degrees of bluntness and intensity, that the insurance company, in refusing to settle, was pursuing its own interests, at the expense of the insured. Each letter then indicates that the insured can sue the insurance company for bad faith. Unless the facts of the particular case raise a substantial issue of bad faith, this message will violate Rule 16-401, which prohibits a lawyer from knowingly making a false statement of material fact or law to a third person. Insurance companies do have duties to their insureds; those duties do not necessarily obligate them to settle every case. In the vast majority of cases, negotiations fail due to a simple inability to agree on the value of the case. That, of course, is what lawsuits are for: to determine and resolve such disputes. The mere fact that the insurer does not agree with the plaintiff attorney's evaluation of case is not evidence of bad faith.

The message that the insured can sue his or her insurance company for bad faith could also violate Rule 16-403. That rule prohibits a lawyer, in dealing with an unrepresented person, from engaging in conduct that implies that the lawyer is disinterested. The ABA Comment to this rule states that "[d]uring the course of a lawyer's representation of a client, the lawyer should not give advice to an unrepresented person other than the advice to obtain counsel." Giving advice to an unrepresented person may imply that the lawyer is disinterested, i.e. not acting solely for the benefit of his or her client, at least to the extent of the advice given. For a lawyer to tell the party against whom suit is being filed that the insurer acted improperly by not settling and can be sued for bad faith sends the message that this information is being conveyed for the benefit of the insured. This is true no matter how explicitly the letter gives notice that the lawyer is representing the party filing the lawsuit against the insured.

Although the letters differ in tone, each appears designed to frighten the insured into believing that the insurance company has betrayed them by refusing to settle, so that the insured will threaten the insurance company with a bad faith claim in order to force a settlement. This is not a legitimate purpose for sending a letter to an opposing party. If the intended effect is achieved, both the insured and the insurance company will be "burdened." Rule 16-404 prohibits a lawyer from engaging in conduct that has "no substantial purpose other than to embarrass, delay or burden a third person...." These letters may also violate this rule. They almost certainly violate Rule 16-804(D), which prohibits conduct prejudicial to the administration of justice. Attempting to achieve a client's goals, by driving a wedge between the insured and its insurer and suggesting that the lawyer retained by the insurance company will not represent the insured's interests and that the insured has or may have a bad faith claim against the insurance company — all of these are acts prejudicial to the administration of justice.

The Disciplinary Board recommends that lawyers forebear from sending such letters. If a lawyer does decide to send such a letter, it is imperative that he or she be certain that there is a reasonable factual basis for the statements made to the insured, that no legal advice is given, and that the purpose is other than to frighten the insured into pressuring the insurance company to settle.

Disciplinary Board Vacancy

One vacancy exists on the Supreme Court Disciplinary Board. If interested in applying, send letter of interest and/or resume to Kathleen Jo Gibson, P.O.